
Michigan Commission on Law Enforcement Standards
Public Hearing on Regular Employment
January 12, 2007
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Lansing, Michigan

MCOLCS MEMBERS PRESENT:

Chief Doreen Olko, representing the Michigan Association of Chiefs of Police
Sheriff Robert Pickell, representing the Michigan Sheriffs' Association
Mr. Raymond Beach, Executive Director
Mr. Tom Furtaw, Commission Counsel

COMMISSION STAFF PRESENT:

Mr. Dale Rothenberger Ms. Cheryl Hartwell
Mr. David King

GUESTS (completing cards):

Chief Eugene H. Bruns, Almont Police Department
Deputy Chief Jack Ceo, Saline Police Department
Chief Howard Chanter, Huron-Clinton Metropolitan Authority
Dr. Rhonda K. DeLong, Parchment Police Department
Retired Chief Robert Gibson, Norvell Township Police Department
Chief Jamie Grinzinger, Edmore Police Department
Officer Kevin A. Hemstreet, Parchment Police Department
Chief Mark Hetfield, Williamston Police Department
Sgt. James Hinton, Lowell Police Department
Marshall Robert Hooker, Sherman Township Marshal's Office
Sgt. Tim LeGault, Walkerville Police Department
Chief Larry Nielsen, Coleman Police Department
Chief Garry O'Dell, Norvell Township Police Department
Ranger Greg Parks, Genesee County Parks & Recreation Commission
Commander Harley B. Rider, Huron-Clinton Metropolitan Authority
Chief Robert Robles, Jr., Walkerville Police Department
Director David G. Thompson, Ithaca Police Department
Chief Tim Tomp, Deckerville Police Department
Chief Martin Underhill, Grand Ledge Police Department
Director Ron Walker, Genesee County Parks
Chief Larry Weeks, Morenci Police Department
Chief Charles A. Weir, Hudson Police Department

INTRODUCTIONS:

The Public Hearing on Regular Employment began at 10 am. Mr. Beach introduced the committee members. He thanked everyone in attendance for taking time from their busy schedules to attend the hearing. Mr. Beach explained the format that would be followed for the hearing and encouraged everyone to provide testimony relative to their use or concerns associated with establishing a definition for regular employment.

LEGAL CONSIDERATIONS:

Mr. Tom Furtaw explained that the issue of regular employment has been in existence for some time. There has been some debate over the scope of regular employment and what is the legal definition. He explained that the purpose of his presentation is to provide a background of the legal issues surrounding regular employment. Mr. Furtaw explained that it is key to keep in mind when we speak about compliance; the law provides MCOLES, as a public body, with some flexibility in defining what constitutes regular employment as a law enforcement officer in Michigan. As it stands right now, there is no definition of regular employment in the Michigan statute relative to law enforcement. Mr. Furtaw explained that he was surprised at the lack of a clear definition when he joined the Commission. He further explained that he then began to look at some of the statistics where, in some cases there are officers who are licensed, and recognized as regularly employed, but are working less than 40 hours per year for example.

Mr. Furtaw began his formal presentation by looking at where the language “regular employment” comes from. Public Act 203 of 1965, as amended, defines who a police officer is and what entities are law enforcement agencies. In Section 2, the Act defines a law enforcement officer as “a regularly employed member of a law enforcement agency authorized and established pursuant to law.” What does this mean? MCOLES licenses individuals who meet the statutory definition of a police officer. MCOLES has authority and is required by law to set certain standards regarding who qualifies. MCOLES doesn’t determine what a law enforcement agency is, that is done by independent authority. MCOLES looks at individuals who are employed by a recognized law enforcement agency to determine whether or not they meet state standards. Some of these standards are obvious and easy to understand such as the physical requirements, academic requirements, etc., but the question remains of what regularly employed means. The words appear in the statute, but are not clearly defined.

Over the years, the courts have gone back and forth and the Attorney General has issued opinions on who qualifies as a peace officer. Some of the issues have been the authority of an auxiliary officer, reserve officers, DNR agent, or a motor carrier officer? MCOLES sets standards for selection, employment, licensing, revocation and provides funding for the training of law enforcement officers in the state. MCOLES then issues licenses to those individuals who qualify as law enforcement officers in Michigan. There is nothing

in the law that requires or compels MCOLES to license an individual. An independent judgment is made on each individual. A key point under Public Act 203 is if an officer from a law enforcement agency separates employment, whatever the reason, and they have been employed by a law enforcement agency for less than one year, they remain eligible to return to law enforcement employment for a period of one year. The statute also recognizes additional years of experience and provides for an increased amount of time, up to two years, that a license of a law enforcement officer will remain active and allow the officer to return to work without having to meet any additional requirements. This is an important point because the legislature is identifying that service or years of experience count. Mr. Furtaw stated that he doesn't think however, that what was contemplated here was that an individual qualifies as working one to five years because they worked three weeks in year one, and three days in year two. From the legal perspective that doesn't make sense, however, it is clear that work experience counts and the term regularly employed counts; it has meaning.

Mr. Furtaw stated that he looked to other areas of the law to provide assistance in determining what the term regularly employed means. He stated that the federal Fair Labor Standards Act (FLSA) requires overtime and minimum wage for individuals who are employed. This is federal law and states can not trump the FLSA. The question of who qualifies for overtime and minimum wage is addressed in the Code of Federal Regulation that speaks to an exemption for overtime where the employment is only occasional or sporadic.

Under the Workman's Compensation law compensation is required for regular employment. One view is to be employed full time for 13 weeks per year. There is also a case that is referenced in one of the Attorney General Opinions that looks at whether or not there is a pattern or course of conduct. Mr. Furtaw also spoke about researching if and when a substitute teacher is considered regularly employed. The courts look at a daily per diem. Are they casual and temporary? Are they on call? Are they free to decline work or work for other employers? If the answer to any of these questions is no, then it is going to gravitate towards them being recognized as regularly employed.

Mr. Furtaw explained that there have been four Attorney General Opinions that talk about Public Act 203 (the MCOLES Act) and the term regular employment that has existed in the MCOLES definition for a number of years and was looked at in the following Attorney General Opinions:

Attorney General Opinion No. 4792 (1973) - The issue raised was, are constables exempt from the Carrying a Concealed Weapon (CCW) requirements?

Historically, constables have been defined as peace officers. The question arose as to whether or not they were exempt from the CCW requirements? Police officers do not have to apply for a CCW permit. Attorney General Frank Kelly opined that only peace

officers who were regularly employed and paid by an agency qualify as exempt from a CCW requirement. This opinion also defined the work load. The work must be substantial rather than occasional and would constitute a large part of the officer's daily activity. This is in the context of a CCW permit and is interpreting MCL 28.602.

Attorney General Opinion No. 5265 (1978) This issue dealt with sheriff posses or members of a police auxiliary and whether or not they are subject to MCOLES training requirements.

The Attorney General referred to these individuals as emergency peace officers under a special exception in the statute, where, in emergency circumstances, a police chief or sheriff can engage individuals who otherwise are not regularly employed for purposes of dealing with an emergency situation. The opinion stated that while the language in the statute says temporarily engaged, these officers would be subject to the MCOLES requirements if they are regularly employed. This opinion also refers to a pattern of conduct where employment is concerned, meaning something not merely occasional or incidental. The opinion also said that temporarily engaged means irregular or ad hoc and would therefore not be subject to the MCOLES requirements.

Attorney General Opinion No. 5806 (1980) - The issue dealt with reserve police officers and whether or not they were CCW exempt.

Again, Attorney General Frank Kelly said that these individuals must be regularly employed which means substantial rather than merely occasionally working. Opinion 5806 left the decision of regular employment to the 83 county gun boards. The opinion is saying that there is legal issue that is driven by a factual inquiry. The factual question will be settled by a county gun board.

Attorney General Opinion No. 7098 (2002) Attorney General Jennifer Granholm undertook a question regarding reserve and regular police officer exemption to the CCW requirements.

The Attorney General couched this issue with the same basic analysis: Does the officer perform substantial work that constitutes a large part of the officer's daily activity. If so, then they could be found to be regularly employed and exempt. The county gun boards will once again decide this question.

Mr. Furtaw explained that there is an issue that is being raised with these opinions. MCOLES is getting questions that have legal ramifications about what constitutes regular employment. What the Attorney General Opinions are telling us is that regular employment means substantial work, something greater than sporadic or infrequent. The bottom line is that regular employment is recognized in law. MCOLES, as a state agency, is a licensing body and is bound by Attorney General Opinions that don't

directly address the question, but clearly state that regular employment is recognized in law as meaning something more than casual or infrequent.

Ultimately, in Mr. Furtaw's opinion, the courts will define regular employment if law enforcement doesn't. Sooner or later there is going to be litigation either as a result of an incident where someone is injured during an arrest or there is a jurisdictional issue raised, or a union gets involved and has an issue. Sooner or later the question of what constitutes regular employment will get into the courts. The law currently provides a great deal of flexibility and it would be preferable that law enforcement define regular employment, as apposed to a judge that will suit law enforcement needs. MCOLES specifically needs a policy to address the requirements to define regular employment.

As it stands right now, absent a definition, MCOLES is being compelled to recognize individuals that, as a matter of common sense, clearly fall outside the rational definition of regularly employed. Mr. Furtaw explained that he would be hard pressed to defend a license in a case where a jurisdictional question or an injury during an arrest had occurred and to carry the freight in front of a circuit judge claiming that MCOLES pretty much recognizes anyone as long as they are carried on a law enforcement roster. The judge's first question would be "don't you take some due diligence to ensure that they are regularly employed?" So, as a licensing body, MCOLES is being forced to deal with this issue. But the key is that we currently have a lot of flexibility to craft a definition that is going to be workable for law enforcement policy across the state and will get us through the courts in the event of litigation.

COMMENTS ON SURVEY RESPONSES:

Sheriff Pickell explained that Chiefs and Sheriffs across the state responded to the MCOLES survey with respect to the regular employment issue in a substantial way. To date, MCOLES has experienced about a 75% response rate.

Mr. Beach explained that one of the hallmarks of the Commission carrying out their responsibilities has always been that MCOLES values taking issues out to the field. MCOLES has definitely benefited by the input received that has allowed us over the last eight years to tackle some pretty monumental issues. Mr. Beach further stated that he is extremely happy with the response rate and results of the survey. The calls incidental to the survey that he has received as well as the discussions at various meetings that he has attended have all been very positive. Law enforcement sees the Commission attacking this issue more from a proactive standpoint.

As Mr. Furtaw indicated, MCOLES feels much better about dealing with this issue with the assistance of the people that we serve verses having the courts dictate us. This was clearly evident to MCOLES in 2002 with some serious dialogue with Attorney General

Granholm's office. She, through her legal counsel, was very specific to the Commission that this was an issue that needed to be resolved. It was very difficult for her as she looked at issuing an opinion in this area given the rich history that this issue has had.

Prior Commission's have tried to tackle this issue and as some of the participants in the hearing today remember the last try in the late 80's to resolve this issue. There was a debate that resulted, which was quickly stopped, and the issue was placed back on the shelf. Mr. Beach reiterated his appreciation for the replies to the survey by law enforcement agencies and staff hopes to be able to, within the next three weeks, do a complete analysis of the information provided in the survey. The analysis will be shared during the last public hearing on this issue which will be in conjunction with the Michigan Association of Chiefs of Police (MACP) conference on January 31, 2007. With the public outing of the final analysis of the survey, staff will also then mail the results to all law enforcement agencies. Mr. Beach explained that when this issue was looked at a number of years ago, the Commission did not know the extent to which part time law enforcement officers were being used or any of the issues related to part time law enforcement officer employment. Mr. Beach then asked Mr. David King to make comments relative to what the Commission has seen and heard from the surveys, with respect to the use of part time law enforcement officers, from which some conclusions can be drawn.

Mr. David King provided the participants with a handout that gave an overview of the survey information that has been received to date. He explained that one of the interesting points that the survey responses indicate is that among the employers of part time law enforcement officers, better than 57% of the responses indicated that there is an increasing dependency on the use of part time law enforcement officers to provide services. The survey also posed the question of whether or not there should be some type of minimum requirements for part time officers. Among the agencies who employ part time officers, 79% of the survey responses indicated that there should be some type of minimum requirements; and among those agencies who do not employ part time officers, the response rate for minimum requirements was 89%. Mr. King explained that the numbers in the survey are currently fluid as surveys continue to be received by staff on a daily basis. He stated that the following changes should be noted on the second page of the hearing handout to bring the survey statistics current with surveys received to date:

- 343 agencies employ part time law enforcement officers instead of 337
- 21,609 law enforcement positions as of January 5, 2007 instead of 21,621
- MCOLES is currently aware of 1,636 part time law enforcement positions in Michigan

Mr. King explained that the summary in the handout provides a starting point of what we know regarding part time law enforcement employment. He asked that those present provide testimony as to their specific use/non use or concerns regarding part time law enforcement officer employment.

PUBLIC TESTIMONY:

Saline Police Department – Deputy Chief Jack Ceo – The department employs 14 full time officers and 3 sometimes 4 part time police officers. The part time officers are paid approximately \$19.00 per hour and the full time officers are paid approximately \$25.00 per hour. Part time officers do not receive any benefits. Their hours vary from month to month, however, they are more heavily utilized during the summer months, Christmas vacations, holidays, and special events.

Deputy Chief Ceo stated that the department relies on part time officers to fill gaps in scheduling, fill in for officers who call in sick or take vacations. These officers are not regularly scheduled employees. He further stated that his department understands the need for a standard, however, they have two concerns. First, that the threshold is set at a level that can be met. For their department, 300 hours per year would best suit their needs. The second concern is that the standard be based upon an annual number of hours worked and not a monthly amount. This would allow more flexibility for law enforcement agencies to meet their scheduling needs while meeting the state's requirements.

Parchment Police Department – Dr. Rhonda DeLong – The department employs 3 full time law enforcement officers and 8 part time officers. Full time officers are paid approximately \$17.98 per hour and part time officers are paid approximately \$11.57 per hour with no benefits.

Dr. DeLong stated that the department relies heavily on part time officers to provide law enforcement coverage for their citizens. Part time officers are regularly scheduled as well as fill in whenever needed. They average approximately 400 hours per year. All their part time officers are experienced officers. The department totally understands the liability issues associated with part time employment. Dr. DeLong stated that a training requirement should also be a part of the regular employment requirements, not just a number of hours to be worked annually. If an officer can't get enough hours on the street, then more training would be needed.

She indicated that current budget situations make the use of part time officers more attractive to municipalities. Tight budgets make this issue difficult and as a result fewer full time law enforcement positions are available, so officers have no choice but to take part time employment to maintain their MCOLES license. Dr. DeLong stated that part time officers are extremely important to their department during the summer months, but they need to be qualified and trained.

Norvell Township Police Department – Retired Chief Robert Gibson – The department currently employs 2 full time officers and 5 part time officers. All the part time officers have been employed as full time law enforcement officers at other agencies at one time or another. Part time officers are paid approximately \$12.25 per hour with no benefits and full time officer are paid approximately \$16.00 per hour.

Retired Chief Gibson stated that the department relies heavily on part time officers especially when events are going on at Michigan International Speedway. He stated that it is important that all officers, including the part time officers, are provided with training opportunities. Norvell Township is a recreational community and the population triples in the summer. It is tough to get money from the community to support law enforcement activities. Retired Chief Gibson stated that his department is concerned about the number of hours that may be set as the minimum requirement. They feel that officers should work at least two shifts a month. The part time officers employed with his department have other full time jobs as well as family obligations.

Ithaca Department of Public Safety – Director David Thompson – The department employs 3 full time officers and 4 part time officers plus the director position. The full time officers make between \$17 and \$23 per hour and the part time officers start at \$15 per hour with no benefits.

Director Thompson stated that the part time officers employed with his agency are regularly scheduled at approximately a one-half time schedule. These part time officers supplement the road patrol and cover days off taken by other officers. In addition, these officers provide law enforcement coverage during special events and allow for additional cars on patrol. He further stated that there are two categories of officers; officers who are looking to work full time and officers who are happy working part time as they are experienced officers who have retired from other departments.

His department would like to see MCOLES consider an officers work experience when setting requirements for part time employment. The minimum standard should also include training, but should be reasonable. When MCOLES sets this standard, law enforcement agency heads can use this standard to negotiate adequate budgets when they meet with their city councils or boards. In many cases, a standard would assist agency heads in obtaining increases to their operating budgets. He feels that this effort will be positive for the law enforcement profession.

Morenci Police Department – Chief Larry Weeks – The department employs 3 full time officers and up to 6 part time officers. Full time officers are paid approximately \$17.90 per hour and the part time officers are paid approximately \$13.63 with no benefits.

Chief Weeks indicated that his part time officers are used as backup should an officer leave or to cover scheduling problems. The department tries to provide 24 hour coverage

to their community. He is concerned that setting an unreasonable number of hours would negatively impact his department and their ability to provide adequate law enforcement coverage to their citizens. The department is in support of a reasonable minimum standard for all.

His department is a member of the Jackson County Training Consortium and feels that training should be an important component of the minimum standard. He stated that if MCOLES sets a minimum number of hours that an officer has to work to maintain their license, which could be viewed as an unfunded mandate, which would be hard to justify; however, a training requirement could more easily be justified.

Chief Weeks stated that his part time officers are well educated and experienced. One of his part time officers has a law degree and more than 20 years of experience. Two of his part time officers have a baccalaureate degree and more than 15 years of experience, and two have associate degrees with one to five years of experience. These part time officers have full time jobs outside of law enforcement and his department does not want to lose this valuable resource.

Almont Police Department – Chief Eugene Bruns – The department employs 9 full time officers and 5 part time officers. Part time officers are paid approximately \$14.71 per hour with no benefits and full time officers are paid \$17.46 - \$19.91 per hour.

Chief Bruns explained that when he took over as Chief the part time officers did not work many hours. They work more hours now, but he could not guarantee a specific number of hours for each part time officer. He suggested that MCOLES consider requiring additional training for those part time officers who are unable to meet whatever annual minimum number of hours is set.

Edmore Police Department/Sherman Township Marshall's Office – Chief Jamie Grensinger and Chief Robert Hooker – Chief Hooker explained that the Sherman Township Marshall's Office employs 1 full time officer and 2 part time officers. Chief Grensinger works full time for Edmore Police Department and part time for Sherman Township Marshall's Office. These two departments work closely together. The part time officers at Sherman Township Marshall's Office work approximately 50 hours per year. Part time officers are paid \$20 and \$22 per hour. Chief Hooker stated that he works for the minimum wage. The panel asked if Chief Hooker actually paid the federal minimum wage and he replied yes.

Chief Hooker stated that training is an important component and should be included as long as the requirement is reasonable. Possibly the Commission could look at training that could be provided to law enforcement agencies on CD or DVD so that officers could complete the training at their own pace during their assigned shifts.

Chief Grensinger stated that Edmore currently employs 1 full time officer and 2 part time officers. She is the full time officer being paid \$17 per hour and the part time officers are paid \$12 per hour with no benefits. Both part time officers also work full time for the county sheriff's office. These officers work 80 hours per month. She also supports a standard that would include training as long as the standard can be achieved.

Chief Hooker stated that the Sherman Township Marshall's Office is funded by grant funds and receives no local tax dollars for support of departmental activities. The department therefore, budgets very carefully.

Coleman Police Department – Chief Larry Nielson – The department employs two full time officers and utilizes part time officers extensively. Currently the department employs 8 part time officers, 7 of which are retired from other departments with more than 25 years of experience.

Chief Nielson stated that his department supports the establishment of a minimum standard for part time officers, however training is a concern. Training requirements should be a part of the standard for part time officers. Chief Nielson stated that he prefers to hire officers with extensive law enforcement experience. In fact, he strictly hires retired officers only. The department doesn't normally hire academy graduates; however, they did put a reserve officer through the academy. Chief Nielson stated that the number of hours worked down state may not work for agencies up north. He further stated that law enforcement resources are drying up and he is just trying to provide professional law enforcement services with a limited budget.

The department is a member of the Kirtland and Delta Community College consortiums as well as providing internal training to officers continuously. Chief Nielson stated that he specifically liked the 80 hour training program (ALERT) that is offered by the Kirtland consortium every other year. He agreed with Chief Weeks that training should be an important component of a minimum requirement and putting less emphasis on number of hours worked.

Mr. King asked if there was anyone else who wanted to provide testimony to the panel. There were no additional agencies wishing to provide testimony.

QUESTIONS, COMMENTS, AND CONCERNS:

Chief Doreen Olko asked the audience if their part time employees are unionized. Approximately 40% indicated that their part time employees were unionized. She then asked if part time officers were subjected to the same interview and screening process as their full time officers. All agencies indicated that their interview and screening process for part time officers was the same as the process for full time officers.

Morenci Police Department – Chief Weeks stated that the use of part time officers in lieu of full time officers was a significant cost effective tool. However, he stated that he doesn't get the activity from his part time officers that he does from the full time officers. Full time officers know the community better. They know what is going on from day to day whereas the part time officers are not there that often.

The panel was asked if any of their departments employed part time law enforcement officers. Chief Olko responded that her department, Auburn Hills Department of Public Safety, does not employ part time officers. Sheriff Bosscher, Missaukee County Sheriff's Office and Chief Kurt Jones, Cheboygan Department of Public Safety responded that they both employ part time officer. Sheriff Pickell, Genesee County Sheriff's Department responded that his department depends upon seasonal officers in the summer months.

Grand Ledge Police Department – Chief Martin Underhill stated that his department utilizes part time officers to provide minimum coverage with his full time officers as well as for value added programs such as school resource officer or special events. He further stated that mid size agencies expand their services through the utilization of part time officers.

Sherman Township Marshall's Office – Chief Hooker stated that part time officers are very important.

Saline Police Department – Deputy Chief Jack Ceo stated that many law enforcement agencies are experiencing diminishing budgets, therefore forcing them to look at part time employment of law enforcement officers.

Sheriff Pickell asked Dr. DeLong if she thought that local police departments are being forced to consider part time employments due to shrinking budgets?

Dr. DeLong replied that the Parchment Police Department utilizes part time employment of law enforcement officers to allow the agency more flexibility. She explained that this was especially true during a strike that the department experienced. Part time officers would cross picket lines to perform the job that full time union officers would not.

Grand Ledge Police Department – Chief Martin Underhill stated that a shrinking budget was not the case for his department. However, many municipalities are experiencing cuts in revenue sharing and dollars that were available in previous years are no longer available to law enforcement agencies.

Chief Olko stated that she is concerned that there are folks that want to maintain a law enforcement license to support other personal activities and are not really interested in

working with law enforcement agencies to provide quality services. Agency heads should be aware of this fact.

Sherman Township Marshall's Office – Chief Hooker stated that most officers are concerned about keeping their license active for future law enforcement employment. A person with a personal agenda or an ego factor of "John Wayne" should be weeded out by agency administrations.

The question was posed to the panel whether or not MCOLES could determine which officers were working part time for multiple agencies and the number of hours that they were working annually.

Mr. Beach responded that since 2000 MCOLES has that ability and that of the 1,636 part time officer positions in the statistics, approximately 509 of those officers are employed by more than one law enforcement agency and in some cases work in excess of 2,080 hours per year. He further stated that agencies who employ part time officers should pursue obtaining the annual number of hours their part time officers are working with various law enforcement agencies. MCOLES will be happy to provide an agency head with this information if requested.

Mr. Beach stated that MCOLES is extremely happy with the responses to the survey. The response rate is higher than 80% which is excellent for a survey, especially one done during the holiday season. He further stated that the Commission has no preset solution to this matter and that additional analysis is needed before this issue can be framed. Once the analysis is completed and framework for a minimum requirement is drafted the Commission will return to the field to provide hearings as the Commission values input from the law enforcement discipline.

Sheriff Pickell thanked everyone in attendance for taking time from their busy schedules to participate in the hearing and provide the panel with valuable information.

The Public Hearing on Regular Employment concluded at 11:46 am.